

Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00
INRE-00 CIAE-00 DODE-00 PM-05 H-01 INR-07 L-03
NSAE-00 PA-01 PRS-01 SP-02 SS-15 AID-05 CEA-01
COME-00 EB-08 FRB-03 STR-05 TRSE-00 LAB-04 SIL-01
OMB-01 ITC-01 MCE-00 ACDA-07 /097 W
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O 201702Z SEP 77

FM AMEMBASSY BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 1936

AMEMBASSY PARIS PRIORITY

INFO ALL EC CAPITALS PRIORITY

USMISSION GENEVA PRIORITY

AMEMBASSY ANKARA PRIORITY

AMEMBASSY ATHENS PRIORITY

AMEMBASSY LISBON

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY REYKJAVIK

USMISSION NATO

USNMR SHAPE

C O N F I D E N T I A L SECTION 01 OF 02 BRUSSELS 12285

C O R R E C T E D C O P Y PARA 6

USEEC

SHAPE FOR POLAD PRIORITY; ALSO FOR MTN GENEVA

E.O. 11652: GDS

TAGS: EEC, ETRD, EIND, MMOL, MASS, NATO, PFOR

SUBJ: EC TARIFF ON F-16 AND OTHER MILITARY COMPONENTS

REF: (A) BRUSSELS 11884, (B) NATO 8877 (NOTAL),
(C) BRUSSELS 12255

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1. SUMMARY: RECENT COMMISSION ACTION INFORMING MEMBER
STATES THEY CAN NO LONGER UNILATERALLY EXEMPT IMPORTED
COMPONENTS OF MILITARY PRODUCTS FROM EC TARIFFS IS
BASED ON LONGSTANDING COMMISSION DECISION AND WAS NOT
PROVOKED BY ANY MEMBER STATE. COMMISSION SOURCES BELIEVE
THAT ANY EFFORT TO REVERSE DECISION IS LIKELY TO BE

UNSUCCESSFUL BECAUSE COURT WILL LIKELY UPHOLD COMMISSION AND FRANCE WOULD PROBABLY BLOCK ANY COUNCIL PROPOSAL FOR EXEMPTION. END SUMMARY.

2. MISSION HAS COMPILED FOLLOWING BACKGROUND FROM RELIABLE SOURCES INVOLVED IN DECISION TO ELIMINATE UNILATERAL TARIFF EXEMPTIONS FOR MEMBER STATES IMPORTING F-16 AND OTHER MILITARY COMPONENTS.

3. LAST FEBRUARY, AFTER SOME MEMBER STATES MADE PUBLIC STATEMENTS REGARDING THEIR INTENTION TO IMPORT MILITARY COMPONENTS DUTY FREE, EC COMMISSIONER DAVIGNON ASKED COMMISSION'S LEGAL AND CUSTOMS SERVICES AS WELL AS DG III (INDUSTRIAL AFFAIRS) PERSONNEL ABOUT COMPATABILITY OF THIS ACTION WITH ROME TREATY. UNANIMOUS RESPONSE WAS THAT COMMISSION INTERPRETATION OF ARTICLE 223, MADE IN 1961 (BUT NEVER NOTIFIED TO MEMBER STATES UNTIL LAST WEEK) DID NOT ALLOW FOR TREATMENT OF IMPORT DUTIES AS ESSENTIAL SECURITY INTEREST.

ARTICLE 223(1)(B) READS AS FOLLOWS. QUOTE ANY MEMBER STATE MAY TAKE SUCH MEASURES AS IT CONSIDERS NECESSARY FOR THE PROTECTION OF THE ESSENTIAL INTERESTS OF ITS SECURITY WHICH ARE CONNECTED WITH THE PRODUCTION OF OR TRADE IN ARMS, MUNITIONS AND WAR MATERIAL; SUCH MEASURES SHALL NOT ADVERSELY AFFECT THE CONDITIONS OF COMPETITION IN THE COMMON MARKET REGARDING PRODUCTS WHICH ARE NOT INTENDED FOR SPECIFICALLY MILITARY PURPOSES. END QUOTE
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4. IN THE COMMISSION INTERPRETATION THIS ARTICLE APPLIES ONLY TO THE EXPORT OR IMPORT CONTROLS A MEMBER STATE MAY WANT TO PLACE ON CERTAIN PRODUCTS. THE COMMISSION ARGUES THE COMMON EXTERNAL TARIFF (CXT) CANNOT REASONABLY BE CONSIDERED TO INVOLVE NATIONAL SECURITY. IT IS BASICALLY ECONOMIC AND IN THE CASE OF THE F-16 PROGRAM, AT LEAST, THE PROGRAM HAS A HEAVY ECONOMIC RATIONALE (EMPLOYMENT). MOREOVER THERE IS A RISK OF DISTORTING THE CIVILIAN MARKET FOR AIRCRAFT PARTS BECAUSE OF THE OVERLAP BETWEEN THE MILITARY AND CIVILIAN SEGMENTS OF THIS SECTOR. (NOTE: IMPORTED COMPONENTS WILL CONTINUE TO BE EXEMPTED FROM DUTY IF THEY ARE TEMPORARY IMPORTS TO BE USED IN AN RE-EXPORTED PRODUCT.)

5. THE COMMISSION HAD NOT TAKEN ACTION ON THE 1961 DECISION BECAUSE ONLY ITALY WAS KNOWN TO BE PRACTICING THIS EXEMPTION IN 1961 AND ITALY ARGUED THAT SINCE THE PURCHASING ENTITY WAS GOVERNMENTAL IT MADE NO DIFFERENCE WHETHER OR NOT THE TARIFF WAS LEVIED. HOWEVER, SINCE THE CXT PROCEEDS NOW GO DIRECTLY TO THE EC BUDGET, RATHER THAN TO MEMBER STATES, THIS DEFENSE IS NO LONGER VALID.

6. DAVIGNON WOULD HAVE PREFERRED TO HANDLE THE ISSUE MORE DISCREETLY BUT FELT HIS HAND WAS FORCED BY PUBLIC STATEMENTS, ESPECIALLY FROM DENMARK. IN FACT, THE EARLY DISCUSSIONS IN HIS CABINET FOCUSED ON WAYS WHICH MIGHT BE USED TO GET AROUND THE 1961 INTERPRETATION OF ART 223. IN THE END DAVIGNON CABINET CONCURRED WITH LEGAL SERVICES THAT MEMBER STATES SHOULD BE TOLD EXEMPTIONS WILL DEPEND UPON UNANIMOUS COUNCIL APPROVAL UNDER ARTICLE 28 (ALTERATION OR SUSPENSION OF CXT).

7. SOURCES INSISTED THAT FRANCE WAS DEFINITELY NOT RPT NOT INVOLVED IN ANY WAY EITHER IN INSTIGATING OR PUSHING THE ISSUE. NEVERTHELESS OUR COMMISSION SOURCES FEEL CONFIDENTIAL

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FM AMEMBASSY BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 1937

AMEMBASSY PARIS PRIORITY

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USMISSION GENEVA PRIORITY

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C O N F I D E N T I A L SECTION 02 OF 02 BRUSSELS 12285

THERE IS STRONG LIKELIHOOD THAT FRANCE WOULD BLOCK ANY COUNCIL DECISION TO EXEMPT THESE PRODUCTS UNDER ARTICLE 28. COMMENT: WE ARE NOT WHOLLY CONVINCED THAT FRANCE WOULD BLOCK EXEMPTION ESPECIALLY IF IT HAS ANY INTEREST IN DUTY FREE ARMS IMPORTS ITSELF. FOR THIS ASSESSMENT WE DEFER TO EMBASSY PARIS.

8. COMMISSION SOURCES SEEMED CONFIDENT OF EUROPEAN COURT OF JUSTICE'S AUTHORITY TO ADJUDICATE ON THIS ISSUE IF THE DECISION IS CHALLENGED BY A MEMBER STATE AND THAT COURT WOULD SUSTAIN COMMISSION'S DECISION. ONLY MEMBER STATE REACTION SO FAR HAS COME FROM BELGIUM. (REF C) HINTON

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